Filed 3/11/13 Collins v. Shiomoto CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

GARY DONALD COLLINS, Plaintiff and Appellant, v. JEAN SHIOMOTO, as Chief Deputy Director, etc., Defendant and Respondent.	G047195 (Super. Ct. No. 30-2011-00524051) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Derek W. Hunt, Judge. Affirmed.

Law Offices of Chad R. Maddox and Chad R. Maddox for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Alicia M. B. Fowler, Assistant Attorney General, Celine M. Cooper and Darren Shaffer, Deputy Attorneys General, for Defendant and Respondent.

The Department of Motor Vehicles (DMV) suspended Gary Donald Collins' driving privileges for his refusal to submit to, or failure to complete, a chemical test for blood alcohol content (Veh. Code, § 13353, subd. (a)(1)). Collins sought an order from the trial court, via a petition for peremptory writ of mandate, directing the DMV to set aside the suspension. Collins appeals from the trial court's judgment denying his petition. Collins argues he did not refuse a chemical test of his blood alcohol content and law enforcement officers used unlawful force against him in obtaining the chemical test. None of his contentions have merit, and we affirm the judgment.

FACTS

The statement of facts is taken from the administrative record. There is no dispute as to the facts of the case.

One summer evening, a citizen witness reported to the Huntington Beach Police Department an intoxicated person with a red stain on his shirt at a grocery store. Officer Placentia[1] responded to the store. Placentia saw a man, who was later determined to be Collins, pushing a shopping cart in a crooked manner. After he pushed the cart into a cement planter, Collins eventually made it to his vehicle and fumbled with his keys.

When Officer David Dereszynski arrived, he saw Collins sitting in his vehicle with the driver's side door open. Collins closed the door, started the vehicle, backed up the vehicle, drove for a short distance, made a U-turn, and stopped near a shopping cart corral. Collins began driving again, and Placentia activated his emergency lights and initiated a vehicle stop. Collins pulled into a marked parking stall, slightly askew, and the vehicle kept moving forward. The vehicle hit a cement bumper and Collins' head bounced forward from the impact.

Dereszynski approached the driver and saw he matched the description given by the citizen witness. Dereszynski saw a closed 12-pack of beer in the front of the

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1 The record does not include Placentia's first name.

car and a cooler with eight beers inside. Dereszynski turned his attention to Collins and saw objective symptoms of alcohol intoxication; Collins failed to complete the nystagmus test three times. Dereszynski asked Collins to get out of his vehicle. Collins did so but with difficulty, and he had to lean on his vehicle to maintain his balance.

Dereszynski asked Collins pre-field sobriety test questions. Collins spoke in a confused manner and refused to answer many of the questions, stating they were not pertinent to their conversation. The questions he did answer, he answered by asking a question. He was generally a wisenheimer. Collins' speech was slurred and he reeked of alcohol. Although Collins was cooperative, Dereszynski believed Collins' non-responsiveness and rambling responses indicated he was trying to delay the investigation.

Dereszynski attempted to explain and administer the field sobriety tests to Collins but he did not follow directions and continued to ramble largely in a nonsensical manner. Collins was unable to complete the field sobriety tests. When Dereszynski told Collins to sit down on a curb, Collins said, "'I can do that,'" but when he sat down, he fell backwards and his feet flew in the air. Dereszynski arrested Collins. During the encounter, Dereszynski repeatedly told Collins he would have to submit to a blood or breath chemical test but Collins was silent.

Based on Collins' conduct at the scene, Dereszynski determined it would be prudent as a preventative measure to place Collins in the restraint chair while the chemical test was administered. Dereszynski provided his reasoning for doing so: "Since [Collins] was evasive and passively uncooperative at the scene, [Dereszynski] felt it would be best to place [Collins] into the restraint chair as a preventative measure while the chemical test was administered. Normally an arrestee is searched, unhandcuffed, and released to a booking cell. With subjects who are uncooperative or other behaviors are observed, it is safer for them to be placed into the restraint chair prior to being handcuffed. This mitigates any issues with trying to move or place a free moving unrestrained subject into the restraint chair."

Collins was cooperative as officers directed him to sit in the restraint chair. Officers secured Collins in the restraint chair without incident; straps were secured in an "X" fashion across his chest and his arms were strapped to the floor. Collins agreed to submit to a breath test.

Dereszynski told Collins he could not "burp, belch, vomit, or regurgitate[]" and the test would be administered after a 15 minute observation period. Collins asked for water but Dereszynski told him he could not have anything in his mouth for 15 minutes and he could give Collins water after the test. After Collins asked about the restraint chair, a conversation about whether Collins was uncooperative ensued. Dereszynski agreed Collins had not resisted arrest, but he explained to Collins that he had not followed directions or answered questions in a responsive manner.

After the observation period had nearly passed, the following colloquy occurred:

"Dereszynski: Okay. Are you willing to do this breath test in about a minute?

"Collins: No.

"Dereszynski: Do you want to attempt to do this breath test?

"Collins: No.

"Dereszynski: Will you do a blood test?

"Collins: No.

"Dereszynski: All right, [Collins], since you are refusing to do the breath test and the blood test, I am going to go over -- read all this stuff to you; okay?

"Collins: I believe that the charges are shopping while intoxicated, and that's -- that's what -- I see what you're doing, and --"

Dereszynski read the entire chemical test admonition to Collins and again asked Collins whether he would submit to a breath test. The following colloquy occurred:

"Collins: Sir, I have been asking for a drink of water since you have taken me into your custody, at whatever hour that was. That was possibly [eight]-something in your book, and you refused to give me water; and my situation was I was shopping for some groceries, and --

"Dereszynski: Will you take a breath test?

"Collins: -- you stopped me.

"Dereszynski: Yes or no?

"Collins: Within my legal rights, within the Constitution, I will comply with whatever appropriate.

"Dereszynski: Will you take a breath test?

"Collins: Within my legal rights within the Constitution, I would --

"Dereszynski: I don't know if that means 'yes' or 'no.' Will you take a breath test?

"Collins: Sir, you are the legal --

"Dereszynski: Will you take a blood test?

"Collins: Sir, are you the legal expert in this case?

"Dereszynski: Yes. Will you take a blood test?

"Collins: Sir, I asked you within a legal right to the Constitution of the United States whether it is appropriate. Are you able to consult me, or is that something I need to -- further in this conversation?"

"Dereszynski: I take that refusal to answer the questions as a 'no.'"

Dereszynski advised Collins that his partner was going to take Collins' blood. Collins repeatedly asked whether "this [was] the only legal recourse" he had. Dereszynski advised Collins he had two choices and Collins chose neither, Collins disputed he said, "No." After Dereszynski explained he interpreted Collins'

non-responsiveness as a refusal to take either test, Collins stated: -- within the Constitution of the United States, does this -- what are my options?" Dereszynski replied he knew his options. A nurse obtained a blood sample from Collins without incident.

Three months later, a DMV Administrative Per Se hearing was held. The hearing officer considered the police and DMV records, and a DVD of what transpired at the jail. About two weeks later, the DMV suspended Collins' license based on the following: (1) there was reasonable cause to conclude Collins was driving under the influence; (2) Dereszynski lawfully arrested him; (3) Dereszynski advised Collins the DMV would suspend or revoke his driving privilege is he refused to complete the required testing; and (4) Collins refused to complete the required testing.

Two days later, Collins filed a "petition for peremptory writ of mandamus," and the Attorney General answered.

Collins filed an opening brief in support of his petition. Collins argued the following: (1) a writ of mandate was the proper remedy; (2) relying on *Berlinghieri v. Department of Motor Vehicles* (1983) 33 Cal.3d 392 (*Berlinghieri*), the trial court must review the DMV's suspension of his driver's license de novo; (3) Collins did not refuse to submit to any constitutionally administered chemical test; (4) officers used excessive force against him when they secured him in the restraint chair; (5) the Vehicle Code's administrative license suspension procedures purpose was carried out because officers obtained a blood sample without incident from Collins; and (6) Collins was entitled to attorney fees and costs. The Attorney General filed her opposition, and Collins filed his reply.

At a hearing in June 2012, the trial court heard and considered written and verbal arguments and took the matter under submission. The trial court began by stating "This is not a writ of administrative mandamus. This is a request for a writ of mandate, as I see from the papers." The court then described the facts of the case. In response to a question from the court about the nature of the case, Collins' counsel explained the case

was about two things, use of the restraint chair and whether Collins refused to submit to a chemical test. When the court inquired whether the appropriateness of the chair was raised at the Administrative Per Se hearing, Collins stated at least "indirect[ly] because we were looking at the fair meaning to be given the words and conduct of [Collins] . . . in context." The court asked the Attorney General whether the issue was one of a due process violation or administrative mandamus, and the Attorney General responded, "it's a red herring[]" as the officer demonstrated great patience in dealing with Collins. When the issue of the DVD of the encounter came up, Collins' counsel asked the court to review the DVD.

The trial court returned to the distinction between administrative mandamus and a writ of mandate. After the court quoted language from *Berlinghieri, supra,* 33 Cal.3d 392, indicating it reviews an administrative agency's decision affecting a fundamental vested right de novo, the court inquired of Collins' counsel whether that is what he was asking the court to do. He replied, "Absolutely." The court stated it was to consider "a due process question," and Collins' attorney answered, "Yes, at least one." As the court discussed whether it was the DMV that should be concerned with the issue of whether there was a due process violation, Collins' counsel asked for permission to speak. He stated, "Now, I've heard the court's thoughts on this, I understand why the court is struggling with this idea. I want to be clear about what the petitioner is seeking in this case. He's not seeking any sort of redress for his due process violations." The court said, "[Collins] wants his license back." Collins' counsel stated, "Correct . . . ." The court stated administrative mandamus review was proper, and Collins counsel agreed. Collins' counsel added, "I think that it still requires the court to use its independent judgment when it reviews the administrative hearing." The court responded, "Well, that's not exactly the way that it was phrased on the hearing case, but it says I have to do both." The trial court took the matter under submission. A few days later, the trial court denied the petition.

The Attorney General submitted a proposed order finding Collins refused to submit to a chemical test. Collins did not object.

On July 11, 2012, the trial court filed an order denying Collins' petition for writ of mandate and entered judgment in favor of the DMV. The court explained it had read the moving papers and the administrative record, which contained a transcript of the encounter and a copy of the DVD.[2] The court ruled: "The court finds that [Collins] refused to submit to a chemical test for blood or breath following his arrest for driving under the influence despite being asked to do so by a peace officer and after being advised of the consequences for his refusal."

DISCUSSION

I. Standard of Review

Relying on various comments the trial court made at the hearing, Collins argues the court applied the incorrect standard of review. We disagree.

"If the decision of an administrative agency will substantially affect a 'fundamental vested right,' then the trial court must not only examine the administrative record for errors of law, but also must exercise its independent judgment upon the evidence. [Citation.]" (*Berlinghieri, supra*, 33 Cal.3d at p. 395.) A driver's license is a fundamental vested right. (*Id.* at p. 398.)

"On appeal, we 'need only review the record to determine whether the trial court's findings are supported by substantial evidence.' [Citation.] '"We must resolve all evidentiary conflicts and draw all legitimate and reasonable inferences in favor of the trial court's decision. [Citations.] Where the evidence supports more than one inference, we may not substitute our deductions for the trial court's. [Citation.] We may overturn the trial court's factual findings only if the evidence before the trial court is insufficient

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[2] We have watched the DVD of the encounter.

as a matter of law to sustain those findings. [Citation.]"' [Citations.]" (*Lake v. Reed* (1997) 16 Cal.4th 448, 457.)

Here, at the hearing, the trial court discussed *Berlinghieri, supra,* 33 Cal.3d 392, concerning the proper standard of review. In trying to ascertain the nature of Collins' complaint, the court explored at length the distinction between administrative mandamus and a writ of mandate. We note Collins' counsel initially had difficulty articulating the relief he sought for his client. In the beginning of the hearing when the trial court stated "we're not worrying really at all about the procedures adopted by the DMV" but "whether or not this is superseded by a fundamental violation of the rights, the due process rights of your client[]" counsel answered, "I think the writ says due process, yes, your honor." Later, counsel said Collins was "not seeking any sort of redress for his due process violations[,]" Collins simply wants his driver's license back.

We conclude the court applied the proper standard of review. In discussing the standard of review, the only case the trial court mentioned was *Berlinghieri, supra,* 33 Cal.3d 392, the case Collins relies on in providing the applicable standard of review. Near the end of the hearing, Collins' counsel stated the court must "use its independent judgment when it reviews the administrative hearing." The court responded, "Well, that's not exactly the way that it was phrased on the hearing case, *but it says I have to do both*." (Italics added.)

The court in *Berlinghieri, supra,* 33 Cal.3d at page 395, stated that if an administrative agency's decision substantially affects a fundamental vested right, the court must do *two* things: (1) the trial court must examine the administrative record for errors of law; and (2) the trial court must exercise its independent judgment upon the evidence. We decline Collins' invitation to conclude the court utilized the incorrect standard of review after the effort it took to understand the legal basis of Collins' claim. (*A Local & Regional Monitor v. City of Los Angeles* (1993)

12 Cal.App.4th 1773, 1792 [appellate court assumes trial court applied correct standard of review unless contrary indication in record].) There is nothing in the record that undermines our confidence the trial court applied the correct standard of review. Additionally, Collins did not timely object to the proposed order on the ground the trial court applied the incorrect standard of review. (Cal. Rules of Court, rule 3.1312(a).) Thus, we are confident the trial court applied the correct standard of review. We now turn to the merits of Collins' contentions. But before we do, we briefly discuss the doctrine of implied findings.

The doctrine of implied findings requires the appellate court to infer the trial court made all factual findings necessary to support the judgment. (*Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 58.) Collins had the right to request a statement of decision (Code Civ. Proc., § 632), and it was then his obligation to bring any ambiguities or omissions in the court's decision to its attention. (Code Civ. Proc., § 634.) Having failed to do so, we properly infer the trial court made any implied factual findings necessary to support the judgment. (*Gately v. Cloverdale Unified School Dist.* (2007) 156 Cal.App.4th 487, 496 [although trial court did not address issue raised in petition for writ of mandate, because petitioner failed to object to this omission, appellate court presumes on appeal all factual findings necessary to support the judgment and defers to these implied factual determinations if supported by substantial evidence].)

II. Refusal to Submit to Chemical Test

Collins argues he did not refuse to submit to a chemical test. Not so.

"Before the DMV may suspend a driver's license for failure to submit to a chemical test, the DMV must make four findings: (1) the officer had reasonable cause to believe the person was driving a vehicle while under the influence of drugs or alcohol; (2) the person was arrested; (3) the person was told that if he or she refused to submit to, or did not complete, a chemical test his or her license would be suspended; and (4) the person refused to submit to, or did not complete, such a test. [Citations.]" (*Garcia v.*

Department of Motor Vehicles (2010) 185 Cal.App.4th 73, 79, fn. 3 (*Garcia*).) Collins disputes only the last factor, that he refused to submit to a chemical test.

"'The question whether a driver "refused" a test within the meaning of the statute is a question of fact. [Citation.]' [Citation.] To comply with the law, a 'driver should clearly and unambiguously manifest the consent required by the law. Consent which is not clear and unambiguous may be deemed a refusal.' [Citation.] 'In determining whether an arrested driver's conduct amounts to a refusal to submit to a test, the court looks not to the state of mind of the arrested driver, but to "the fair meaning to be given [the driver's] response to the demand he submit to a chemical test." [Citations.]' [Citation.]" (*Garcia, supra,* 185 Cal.App.4th at pp. 82-83.)

Here, after Collins had been in the restraint chair for nearly 15 minutes, he twice refused to submit to a chemical breath test and once refused to submit to a chemical blood test. Dereszynski read the entire chemical test admonition to Collins, advising him that if he refused to submit to a chemical test the DMV would suspend his driver's license.

Dereszynski again asked Collins whether he would submit to a breath test. The following colloquy occurred:

"Collins: Sir, I have been asking for a drink of water since you have taken me into your custody, at whatever hour that was. That was possibly [eight]-something in your book, and you refused to give me water; and my situation was I was shopping for some groceries, and --

"Dereszynski: Will you take a breath test?

"Collins: -- you stopped me.

"Dereszynski: Yes or no?

"Collins: *Within my legal rights, within the Constitution, I will comply with whatever appropriate.*

"Dereszynski: Will you take a breath test?

"Collins: Within my legal rights within the Constitution, I would --

"Dereszynski: I don't know if that means 'yes' or 'no.' Will you take a breath test?

"Collins: Sir, you are the legal --

"Dereszynski: Will you take a blood test?

"Collins: Sir, are you the legal expert in this case?

"Dereszynski: Yes. Will you take a blood test?

"Collins: Sir, I asked you within a legal right to the Constitution of the United States whether it is appropriate. Are you able to consult me, or is that something I need to -- further in this conversation?"

"Dereszynski: I take that refusal to answer the questions as a 'no.'"

Collins relies on the above italicized language to argue he submitted to the chemical breath test when he states he would comply with whatever was constitutionally appropriate. Indeed, he feels so strongly he submitted to the test that in his opening brief he writes, "THIS IS NOT A REFUSAL BUT AN EXPRESS AGREEMENT TO COMPLY WITH THE LAW." We disagree as his response was not clear and unambiguous, and the trial court could properly rely on this response, and his previous three "No" responses, to conclude Collins was refusing to submit to a chemical test and he was generally uncooperative. Had Collins truly been willing to submit to the chemical test, he would have simply answered, "Yes," when Dereszynski stated he was unsure whether Collins submitted to the test instead of saying, "Sir, you are the legal --" and "Sir, are you the legal expert in this case?" Collins' conduct at the jail was a continuation of what Dereszynski described as "passively uncooperative" that began at the supermarket parking lot. Dereszynski advised Collins numerous times, beginning at the parking lot and then again at the jail, of the consequences of refusing the test. Collins cannot now complain Dereszynski failed to recognize his acquiescence to the test. Therefore, we conclude substantial evidence supports the trial court's determination

Collins refused to submit to a chemical test when after being advised of the consequences of refusing to submit to a chemical test, Collins' responses were unclear and ambiguous.

III. Due Process & Fourth Amendment

Collins contends his substantive due process and Fourth Amendment rights were violated when law enforcement officers secured him in a restraint chair for 15 minutes and forcibly drew blood. Again, we disagree.

In *Schmerber v. California* (1966) 384 U.S. 757, 759 (*Schmerber*), the Supreme Court of the United States rejected petitioner's due process, privilege against self-incrimination, right to counsel, and right not to be subjected to unreasonable searches and seizures claims after a police officer directed a physician to withdraw blood at a hospital. The Supreme Court approved forcible chemical testing of persons arrested, so long as (i) the test is incident to a lawful arrest for driving under the influence of alcohol or a drug, (ii) the circumstances require prompt testing, (iii) the arresting officer has reasonable cause to believe the arrestee is intoxicated, and (iv) the test is conducted in a medically approved manner. (*Id.* at pp. 769-771.)

In *Mercer v. Department of Motor Vehicles* (1991) 53 Cal.3d 753, 758-760 (*Mercer*), the California Supreme Court explained that in response to *Schmerber, supra,* 384 U.S. 757, the California Legislature enacted our implied consent law (Former Veh. Code, § 13353, now Veh. Code, § 23612.) After describing a forcible blood removal as "unpleasant, undignified and undesirable," the *Mercer* court explained, "'the shocking number of injuries and deaths on the highways caused by drunk drivers has compelled society to adopt extreme measures in response.'" (*Mercer, supra,* 53 Cal.3d at pp. 759-760.)

In *Park v. Valverde* (2007) 152 Cal.App.4th 877, 887 (*Park*), another panel of this court stated: "[W]e conclude that the exclusionary rule is inapplicable to the DMV administrative proceedings on these facts. On the one hand, we acknowledge that the application of the exclusionary rule . . . to DMV administrative proceedings could

theoretically provide a supplemental basis for deterring law enforcement officials from maintaining inaccurate stolen vehicle records. On the other hand, we must also consider the responsibility of the DMV to get drunk drivers off the road for the protection of society at large. [Citation.] We cannot ignore the fact that the criminal drunk driving proceedings and the DMV administrative proceedings serve different primary purposes—one to punish drunk drivers and one to get them off the streets. [Citation.] The suppression of evidence in the context of criminal proceedings, as was done here, should provide adequate deterrence of wrongful police conduct in recordkeeping. Although the suppression of evidence in the DMV administrative proceedings as well could provide some supplemental deterrent effect, it would only be at the expense of protecting the public from the drunk driver, and indeed, protecting the drunk driver from himself. In order to permit the primary purpose of the DMV administrative proceedings to be served, we conclude that the suppression of evidence in those proceedings is not required in this case."

Here, based on all the circumstances, we conclude Collins' federal constitutional rights were not implicated. Dereszynski explained the normal procedure was to search an arrestee, remove the handcuffs, and release the arrestee to a booking cell. He also explained however that when an arrestee is uncooperative, he places them in a restraint chair to conduct the test and ensure the safety of the arrestee.

Dereszynski described Collins as "passively uncooperative." Collins would not directly answer his questions. Based on his long, rambling, circular responses, Dereszynski believed Collins was trying to delay the investigation in an attempt to obtain a better result on a chemical test. Dereszynski stated Collins could not stand up straight, had to lean on his car to maintain support, and when he sat on the curb he fell back and his feet flew in the air. Based on Dereszynski's observations, it was certainly reasonable for him to conclude Collins could not maintain his balance and would have difficulty submitting to a chemical test, even though Collins walked into the jail under his own

power. Dereszynski's decision to secure Collins in the restraint chair for Collins' own safety and to conduct the chemical test was not egregious and did not implicate Collins' federal constitutional rights.[3] Thus, like *Park, supra,* 152 Cal.App.4th 877, there is no indication of egregious conduct that would support use of the exclusionary rule.

Collins relies on *Carleton v. Superior Court* (1985) 170 Cal.App.3d 1182 (*Carelton*), to argue Dereszynski used more force than necessary to obtain a blood sample. In *Carleton* the court stated: "Law enforcement must act reasonably and use only that degree of force which is necessary to overcome a defendant's resistance in taking a blood sample. Even where necessary to obtain a blood sample police may not act in a manner which will 'shock the conscience.' A defendant's arbitrary refusal to submit to a blood test will not excuse unlawful police conduct." (*Id.* at pp. 1187-1188, fn. omitted.) Collins' reliance on *Carleton* is misplaced. In that case, defendant physically resisted submitting to the test and six law enforcement officers had to restrain him to obtain blood. Although Collins did not physically resist, a fact Dereszynski acknowledged during the encounter, Collins was "passively uncooperative" and physically unstable. As we explain above, Dereszynski secured Collins in the restraint chair to prevent any further delay in obtaining a chemical test from Collins and to ensure Collins' safety.

Collins' reliance on *Nelson v. City of Irvine* (1998 9th Cir.) 143 F.3d 1196 (*Nelson*), and *Hammer v. Gross* (1991 9th Cir.) 932 F.2d 842 (*Hammer*), is misplaced as they involved 42 U.S.C. section 1983 actions based primarily on alleged Fourth Amendment violations. Both cases relied on *Schmerber, supra,* 384 U.S. 757, in

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[3] The Supreme Court of the United States granted certiorari in *State v. McNeely* (Mo. 2012) 358 S.W.3d 65, certiorari granted September 25, 2012, ___ U.S. ___, [133 S.Ct. 98, 183 L.Ed.2d 737] (Case No. 11-1425). The issue is the following: "whether a law enforcement officer may obtain a nonconsensual and warrantless blood sample from a drunk driver under the exigent circumstances exception to the Fourth Amendment warrant requirement based upon the natural dissipation of alcohol in the bloodstream."

addressing the issue of whether law enforcement officers' use of force was excessive. (*Nelson, supra,* 143 F.3d at pp. 1200-1205; *Hammer, supra,* 932 F.2d at pp. 845-846.) And in both cases, defendants were ultimately forced to undergo blood tests without being given the option to submit to a breath test. (*Nelson, supra,* 143 F.3d at p. 1199; *Hammer, supra,* 932 F.2d at p. 844.) As we explain above, Dereszynski's use of the restraint chair to ensure Collins' safety and obtain the blood sample does not shock the conscience after Collins' unclear and ambiguous responses justified Dereszynski in concluding Collins refused to submit to the chemical test.

IV. Implied Consent

Collins claims that because he "'did not resist, move, or contest' the blood draw[]" he complied with the spirit of Vehicle Code section 23162, subdivision (a)'s implied consent law. Collins could not resist because he was in a restraint chair after having refused to submit to a chemical test. We decline Collins' invitation to reject the Attorney General's "literal, to-the-letter interpretation" of Vehicle Code section 23612, subdivision (e).

DISPOSITION

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

THOMPSON, J.